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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. [redacted]2 80

INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, JOLIET, WILL COUNTY, ILLINOIS and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

Petitioners,

vs.

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

Respondents.

BRIEF AND ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 852.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, JOLIET, WILL COUNTY, ILLINOIS and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

Petitioners,

vs.

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

Respondents.

BRIEF AND ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI.

To The Honorable, The Chief Justice and Associate Justices of The Supreme Court of the United States:

ARGUMENT.

I.

The Questions Involved In This Petition Have Become Moot Questions By Reason of Agreement of Parties to Settle Their Controversy.

The Transcript of Record filed in this Court in support of the Petition for Writ of Certiorari shows that the Petitioners and Respondents by their respective attorneys entered into a Stipulation (Record 73) and a Joint Motion

(Record 72) indicating that all matters in controversy had been settled by and to the mutual satisfaction of all parties hereto. This Stipulation and Motion was filed in the Supreme Court of Illinois on March 13, 1948 (Record 71) which was two days after the Petition for Rehearing was denied (Record 70-71) in that court.

Petitioners have carefully refrained from calling this Court's attention to the said Stipulation and Motion because they know that this Court does not engage in deciding moot questions but only reviews actual controversies. (*Jones* v. *Montague,* 24 S. Ct. 611, 194 U. S. 147, 48 L. Ed. 913; *South Spring Hill Gold-Min Co.* v. *Amador Medean Gold-Min Co.,* 12 S. Ct. 921, 145 U. S. 300, 36 L. Ed. 712.)

The petitioners have not explained in their petition why they failed to pay the respondent the amount agreed upon and chose to bring this case to this Court after entering into the Joint Motion and Stipulation.

The refusal of the Supreme Court of Illinois to entertain this motion filed two days after the Petition for Rehearing was denied does not involve a constitutional question or a question to be reviewed by this Court.

II.

The Constitutional Questions Raised By Petitioners Do Not Affirmatively Appear In the Record But Are Based Solely On the Contentions of the Petitioners.

This case was originally tried in the Trial Court on Respondents' Amended Complaint (Rec. 6-14) and the Answer of the Petitioners (Rec. 14-20). The Petitioners in their answer categorically denied most of the allegations in the Respondents' Amended Complaint. The union admitted in Paragraph 4 of its Answer (Rec. 16-18) that it *informed* its members to stop deliveries to Respondents' stations.

The Respondents alleged in Par. 4 of their Complaint (Rec. 7, 11) and proved by the evidence (Rec. 35) that the union *instructed* the driver and the Standard Oil Company not to make deliveries to Respondents' stations. But nowhere in its Answer did the union seek to justify its acts as an exercise of its constitutional Right of Free Speech. The Petitioners first made claim to their constitutional Rights after the Appellate Court rendered its Opinion by an assignment of Errors (Rec. 40-43) and subsequently by filing a Motion To Transfer (Rec. 55) the cause to the Supreme Court.

The United States Supreme Court has refused to entertain jurisdiction where the Federal Question does not affirmatively appear in the record (*Lynch* v. *People*, 55 S. Ct. 16, 293 U. S. 52, 79 L. Ed. 191) and where there is nothing in the record to show the violation of a constitutional right except a contention (*Lynde* v. *Lynde*, 21 S. Ct. 555, 181 U. S. 183, 45 L. Ed. 810 affirming 56 N. E. 979, 162 N. Y. 405, 48 LRA 679, 76 Am. St. Rep. 332).

Since the pleadings do not raise a Constitutional question, the issues then before this Court are (1) whether the Appellate Court decided a Constitutional Question, (2) whether or not the Supreme Court of Illinois was correct in holding that the Appellate Court did not decide a constitutional question.

The respondents contend that the Appellate Court did not decide a constitutional question. In reviewing the record before it, the Appellate Court said (Rec. 48):

> "This Court shall direct its inquiry, therefore, to an analysis of the legality of the purpose of defendants' conduct and of the means employed to effectuate this purpose."

From the record before it, the Appellate Court found:

a. No contention or proof by petitioners that the respondents were failing to meet the standards and wages of employment fixed by the union (Rec. 49).

b. No contention or proof by petitioners that the Respondents were unfairly competing with the teamsters and chauffeurs union (Rec. 49).

c. No allegation or proof by petitioners that the respondents were conducting their businesses in a manner detrimental to the aims of the union (Rec. 49).

d. That the sole dispute the union had with respondents was the refusal to join the union, and, as a concomitant part thereof, to sign the contract (Rec. 44).

e. That respondents were self-employers (Rec. 47) and hired no employees.

The Appellate Court did not find as argued by petitioners:

a. That the union was composed of teamsters and service station employees (Page 1, Petition).

b. That Dinoffria was actually an employee of Standard Oil Company (Page 2, Petition).

c. That the respondents were direct competitors of many members of union (Page 21, Petition).

Based upon its findings the Appellate Court concluded that there was no community of interest between petitioners and respondents and that the sole conceivable purpose of seeking respondents' memberships in the union was to regulate the hours during which respondents kept their stations open, and to prohibit them from using premiums to stimulate sales (Rec. 49). The Appellate Court held that this was an unlawful purpose and in so holding did not decide a constitutional question.

The Appellate Court further held from its findings of fact that the primary purpose of the boycott was not to advance the interests of the union but to destroy the Respondents' businesses and livelihood in order to coerce the respondents into involuntary membership. This finding and holding did not involve the determination of a constitutional question.

And finally citing (*Carlson* v. *Carpenters Contractors' Ass'n. of Chicago*, 305 Ill. 331; *Doremus* v. *Hennessy*, 176 Ill. 608; *Meadowmoor Dairies Inc.* v. *Milk Drivers' Union of Chicago No. 753*, 371 Ill. 377) the Appellate Court held that it is an actionable wrong to directly or indirectly interfere with or disturb another in his business without lawful cause or justification for the sake of compelling him to do some act which in his own judgment his own interest does not require (Rec. 54). Here again this holding did not involve the determination of a constitutional question.

III.

The Method By Which Petitioners Accomplished the Stopping of Deliveries Was Not By the Exercise of the Right of Free Speech.

It must be pointed out that the method of boycott used here was not the ordinary method of peaceful picketing by carrying placards and banners expressing the Union's position in order to persuade others to break off business relations with the Respondents. This was a direct approach to the Respondents' suppliers (Rec. 35) *instructing* them not to make deliveries.

It has already been pointed out under Point II of this brief that the record here does not contain any contention or proof by the petitioners that the respondents were jeopardizing the working conditions of the Teamsters.

In this respect and because of the lack of community of interest between the petitioners and respondents, the factual situation in the case at bar should be distinguished from the cases of *Meadowmoor Dairies* v. *Milk Wagon Drivers' Union*, 61 S. Ct. 552, 312 U. S. 287 and *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 57 S. Ct. 857. The only grievance which the Union had with Respondents was their refusal to join the union (Rec. 37).

It must also be pointed out the driver James E. Poole testified that he had no dispute with the Dinoffrias (Rec. 34); that the record showed from the testimony of Virgil Floyd that the Executive Board of the union had "the same power as a civil court" and could have fined the driver if he failed to carry out the instructions of the business agent (Rec. 37).

It is apparent from this situation that the stopping of deliveries was not accomplished by persuasion but by placing the drivers in fear of being fined. It is further apparent that this method of approach placed the oil companies in fear because although these drivers were their employees and under their supervision, they did nothing to override the instructions of the union (Rec. 35). They permitted the union to instruct them as to who should not get deliveries of their products.

The Respondents contend that under such circumstances as enumerated above, the verbal boycott was not an exercise of the Right of Free Speech.

The Right of Free Speech is not an absolute right (*Schaefer* v. *U. S.*, 40 S. Ct. 259, 251 U. S. 466, 64 L. Ed. 360). The true liberty of the press is secured by permitting every man to publish his opinions; but it is due to the peace and dignity of society to inquire into the motives of such publications; and to distinguish between those which are meant for use and reformation and with an eye solely for the public good and those which are intended merely to delude and defame (*Respublica* v. *Oswald*, 1 U. S. 319, I Dall 319, 1 L. Ed. 155, 1 Am. Dec. 246).

The First Amendment to the U. S. Constitution while prohibiting legislation against free speech as such cannot have been and obviously was not, intended to give immunity for every possible use of language (*Frohwerk* v. *U. S.*, 39 S. Ct. 249, 249 U. S. 204, 63 L. Ed. 561).

In *Chapinsky* v. *State of New Hampshire*, 62 S. Ct. 756, at page 769, Justice Murphy said:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances."

In *Milk Wagon Drivers Union of Chicago, Local 753, et al.* v. *Meadowmoor Dairies Inc.*, 61 S. Ct. 552, at page 554, Mr. Justice Frankfurter speaking for the majority of this Court said:

> "It must never be forgotten, however, that the Bill if Rights was the child of the Enlightenment. Back of the guarantee of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guarantee of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

The motive of this type of boycott was the complete destruction of Respondents' businesses so that they would be forced into involuntary membership. It must not be forgotten that if the Respondents' can be compelled by this method to join the union, they can by the same method be compelled to operate their stations in accord with the business agent's dictates.

Such a use of the Right of Free Speech does not appeal to persuasion nor does it fairly present the workingman's side of the controversy.

Conclusion.

Respondents therefore respectfully submit that this case is not one calling for the exercise by this Court of its supervisory powers and does not show that petitioners have been, or will be, deprived of rights guaranteed them by the Federal Constitution. Petitioners do not make such a case as should be presented to this Court for consideration, and they should not be granted the Writ of Certiorari.

Respectfully submitted,

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